

Minutes
Legislative Council Committee on Energy
Senate Majority Caucus Room
Statehouse--Boise, Idaho
November 15, 2004
9:30 a.m.

The meeting was called to order by Cochairman Representative George Eskridge at 9:35 a.m. Committee members present included Cochairman Senator Brent Hill, Senator Joe Stegner, Senator Elliot Werk, Representative Bert Stevenson, Representative Maxine Bell, Representative Chuck Cuddy and Representative Steve Smylie. Senator Laird Noh was absent and excused.

Others present were Rich Hahn, Idaho Power Company; Mike Huntington, Intermountain Gas Company; John Sandoval and Brad Smith, DEQ; Ron Williams, Idaho Consumer Owned Utilities Association; Dale Storer and Mark Gendron, City of Idaho Falls; James Burr, Chapman and Cutler, LLP; Peter Richardson, ICIP; David Hawk, JR Simplot Company; Jim Kempton, NW Power and Conservation Council; James Carkulis, Exergy of Idaho; Rich Rayhill, Dennis Meany and Dar Olberding, Ridgeline Energy; Russ Hendricks, Farm Bureau; John J. Williams, BPA; Pat Sullivan and Andrea Mihm, Sullivan and Reberger; Russell Westerborg, PacifiCorp; Marsha Smith, IPUC; Brenda Tominaga, IIPA; Steve Thomas, Moffatt Thomas; Bill Eddie, Idaho Conservation League; John Watts, Veritas Advisors, LLP and Roald Dorskeland, Windland, Inc. Staff members present were Mike Nugent and Toni Hobbs.

After opening remarks **Representative Stevenson** made a motion that the minutes from the September 1 meeting be approved. **Senator Hill** seconded and the minutes were approved unanimously.

Mr. Ron Williams, Idaho Consumer Owned Utilities Association (ICUA), was introduced to discuss proposed energy policy legislation. **Mr. Williams** explained that this legislation is known as the Idaho Energy Resources Act and is similar to law that exists in Wyoming. This legislation is also similar to legislation that was presented to and supported by the committee two years ago. The Wyoming just enacted similar legislation to finance construction of transmission facilities.

Mr. Williams introduced **Mr. Mark Gendron, General Manager of Idaho Falls Power**, to present the legislation further. **Mr. Gendron** stated that information he was able to find on the Energy Information Administration website regarding regional loads and generating resources within our state boundaries is very interesting and helpful. 2002 data reports that in the state of Idaho our retail loads are 2,400 average megawatts and the average generation in Idaho for that same time period is 1,100 megawatts. Idaho depends on energy supply from outside of its boundaries.

Mr. Gendron noted that Idaho has about 16 cooperatives and 11 municipalities that are being represented. In aggregate, these groups are small compared to the investor owned utilities that have a presence in Idaho but they do represent about 15% of the load in the state.

Consumer owned utilities in Idaho have historically depended on the Bonneville Power Administration (BPA) for the vast majority of their energy needs. Idaho Falls has purchased its net requirement from BPA since the 1950s. The future of that energy supply, in **Mr. Gendrons** opinion, is in question. One reason for this is that the hydro system is a defined resource and is also diminishing. The federal system is constantly being degraded for other purposes including for fish and wildlife. According to **Mr. Gendron**, when the public utilities in Idaho current contracts expire in 2010, these utilities will be faced with a fixed amount of energy that is available for purchase from BPA. This will force public systems to look for energy supplies from different sources meaning that consumer owned utilities will be looking for resources to meet their future needs through partnerships with generation facilities.

Mr. Gendron explained that the proposed legislation will provide the means for partnerships between municipal electric systems in Idaho, cooperatives, investor owned utilities and renewable projects. In his opinion, these partnerships are critical for the long-term future of the electric consumers in the state.

Representative Smylie asked if the fiscal impact had been looked at when preparing the legislation since it creates a new board. He also asked if the legislation includes investor owned utilities. **Mr. Gendron** said the legislation does include investor owned utilities. He continued that all costs associated with this authority would be passed on to the participants (the utilities or developers) that use the authority to finance projects including the cost of actually running the board.

Mr. Jim Burr, legal counsel for the ICUA, explained that he did the principle work on the draft legislation. He initially started working on this about three years ago when the focus was on providing a mechanism for Idaho utilities to participate with BPA regarding development of transmission resources throughout the state. The legislation has been refined and expanded so that it now encompasses all types of

energy infrastructure projects. These include energy generation, transmission and distribution as well as renewables and independent power projects.

Mr. Burr noted that the intention of the legislation is to provide a mechanism to finance electric infrastructure projects for investor owned, cooperative and municipal utilities in Idaho as well as independent power projects, conservation measures and renewable energy projects. There is a particular emphasis on projects jointly undertaken by two or more utilities.

The financing model presented by the legislation provides for the issuance of nonrecourse revenue bonds by the authority that are to be repaid solely out of amounts owed by participating utilities under contractual arrangements. These bonds would not be general obligations of the State of Idaho and will not be considered “off balance sheet” financing activities by participating utilities. The bonds would not be a debt of the state as far as the financial market for the rating agencies would be concerned. The state has no obligation to repay these bonds except from the amounts paid to it by participating utilities. In other words, the bonds are obligations of the participating utilities and the energy resources authority acts as a conduit issuer for the bonds.

Mr. Burr explained that whether or not the bonds will bear tax exempt interest is a determination that will be made on a case by case basis depending primarily on the facilities being financed and the participating utilities that will be using the financed facilities. Most of the bonds would be taxable. Municipalities would be able to use tax exempt financing through the authority to the same extent that they can issue their own bonds on a tax exempt basis. Projects could be financed with a mixture of taxable and tax exempt bonds. Since most of the financing done by the authority would either be tax exempt governmental bonds for municipal utilities or taxable bonds for the benefit of investor owned, cooperatives and others, this bill is not expected to make any significant new competition for the state’s \$225 million of private activity bond volume cap.

Mr. Burr stated that the emphasis in the bill is on joint projects and trying to get critical infrastructure investments made in Idaho for the benefit of the state as a whole. Various limitations have been built in to the legislation to ensure that it will not make any change to the existing status quo of utilities in the state. The authority has no power to condemn the operating property or any other property of an existing facility in the state. It does not have the authority to finance such a condemnation and it does not have any legal authority to provide any retail service.

Mr. Burr clarified that the bill does not require participation by any utility. It is entirely an optional means for utilities to finance projects. In his opinion, it is most valuable as providing a single financing mechanism for projects that might be jointly

undertaken by two or more utilities.

In response to a question from **Senator Hill**, **Mr. Burr** explained that this authority is not restricted to renewable energy, it includes all generation, transmission and distribution projects.

Mr. Burr explained also that the directors are only compensated for per diem and actual travel expenses.

In response to another question from **Senator Hill**, **Mr. Burr** stated that whether a municipality is a guarantor for the bonds is decided on a bond-by-bond basis with respect to the particular project. The entity that is obligated to pay off the bonds would be the participating utility that brought the financing to the authority.

Senator Stegner asked what the differences were between this proposed legislation and what was proposed two years ago. **Mr. Burr** said that the primary changes involve additional express limitations on the powers of the authority. The current legislation also expanded the provisions so that they expressly covered independent power projects and renewable energy resources.

Senator Werk stated that the definition of facilities includes fuel supply and asked if bonding would be done for the purchase of fuel supply. **Mr. Burr** said that the intention would be that fuel supply could not, in and of itself, be financed as a separate, stand-alone undertaking. It could be financed as a part of the generation project. For example, financing the construction of a gas-fired power plant could include financing for long term fuel sources for that plant. Many utilities have found that it is necessary to secure fuel supplies appropriate to the generation facility.

In response to a question from **Senator Hill** regarding the presentation of this legislation to the interim committee, **Mr. Williams** explained that their hope was that the committee would recommend and support it for presentation to the Germaine committee.

Representative Eskridge asked, since the state has no obligation to repay the bonds and the participants would be responsible, what happens if one participant defaults. **Mr. Burr** said it would depend on the how the financing is structured. There are a number of items built into the legislation that enable the authority to structure financing in a way to get the best possible credit rating and the lowest possible interest rate on the debt. Typically with most joint projects, each of the joint owners undertakes an obligation to cure certain defaults that may be made by other joint owners. The authority would have remedy to pursue any participating utility that was in default. It is also possible that the default could be cured by third party

creditors. Cooperative utilities that participate with the authority would have the ability to use credit enhancement through the National Rural Utilities Cooperative Finance Corporation that provides letters of credit guarantees on obligations for cooperative undertakings. The municipal bond insurers insure municipal, cooperative and investor owned credit. There is a range of credit enhancement and security techniques that the authority will likely use to avoid the risk of default by one participant.

Dale Storer, City Attorney for the City of Idaho Falls, continued the discussion. He stated that over the last 25 years, since he has been the City Attorney in Idaho Falls, many changes have occurred in the electric utility industry. He has observed the difficulties that a city faces, as a public entity, in trying to finance large projects that are beyond the financial capability or the energy needs of the city. In his opinion, this legislation gives cities that ability. The days of wholly owned public projects are basically gone. The reality is that cities or others must seek resources of larger projects and must have the ability to finance those projects. Currently there are a number of restrictions that prevent a public entity from being able to lend its credit to any other private entity. Public entities also struggle with the ability to enter into agreements to buy larger projects. This legislation, according to **Mr. Storer**, gives public entities a vehicle that enables them to allocate and pledge revenues necessary to own a percentage of certain projects. The legislation does nothing to change the requirements for debt approval but gives them the ability, in an appropriate project, to partner with another entity to buy an ownership interest in a transmission project or generating project. This flexibility does not currently exist under state law and this legislation would help.

David Hawk, JR Simplot Company, was introduced to testify on this issue. He stated that at a meeting of the Industrial Customers of Northwest Utilities he asked Mr. Steve Wright from BPA the following question.

“Assuming any municipality or cooperative in the state of Idaho or Oregon or Washington has an industry that wants to locate where that will require more megawatts than the city has available. Is it BPA’s current position to go to the market to find that extra power?”

According the **Mr. Hawk**, Mr. Wright said that was correct. It can be done by the municipality forming a consortium to purchase the power from BPA, from another utility that has excess capacity or buy it themselves on the market if they can get transmission. This becomes a very difficult situation for cities to understand how to do this.

Consequently, in **Mr. Hawk’s** opinion, this type of legislation is important. As a customer of cooperatives and municipalities, the JR Simplot Company wants to see

those people have access to base load plants. This legislation would allow them to participate in coal fired plants such as the one that is being proposed in Glenns Ferry as well as a number of renewable resource projects.

In **Mr. Hawk's** opinion, this legislation needs to happen along with a risk advisory committee with the directors of the cooperatives and municipalities, not unlike Idaho Power's risk advisory group that sets out policies and standards to which they must adhere. In his opinion, since the cooperative and municipality organization is much more organized than it ever has been and its membership is more active in participating in educational activities and taking care of their rate payers than in the past, this makes legitimate sense for the future of energy. **Mr. Hawk** stated that this legislation gives public entities the opportunity to invest in resources in Idaho. It also gives them the opportunity to work with the investor owned utilities to develop a base load plant even though the investor owned utility might not need all of the output from such a plant.

Representative Eskridge asked if this legislation changes the public entities involvement with the PUC. **Mr. Williams** said it does not. He continued that there is a system by which a participating utility going through the financing authority for financing has to check off with its regulator or its constituent base.

Representative Smylie asked what protection does the legislation provide for the board of directors of the financing authority. **Mr. Burr** explained that the typical limitation on liability that is used becomes part of the contract of the bond owners. Ordinarily in the drafting of bond indentures and resolutions for such projects, an express immunity for directors and officers carrying out their official functions would be included. The directors could also seek third party insurance but the general view would be that individuals serving on the board ought to be immune from lawsuit. **Mr. Williams** added that the cost of such insurance, if necessary, would be paid for by the authority.

Representative Cuddy asked if the formation of a public/private consortium would eliminate the municipal preference cities receive before FERC when they return for relicensing. **Mr. Hawk** said such a consortium should not affect that preference. Formation of a consortium just allows municipalities to market their power more easily.

Representative Stevenson made a motion that the committee recommend this legislation be forwarded to the Germaine committee for consideration. **Representative Smylie** seconded. The motion carried unanimously by voice vote.

Jim Kempton, NW Power and Conservation Council, was the next speaker. He stated that he is also the chairman of the Power Committee and they are currently

holding meetings regarding the Northwest Power Plan. He noted that November 30, 2004 is the final date for comments to be received regarding that plan. He suggested that committee members go to www.nw.council.org to review the power plan in order to get a sense of what it says for the region.

Mr. Kempton explained that the plan shows that regionally there is a surplus of generation but on an individual basis, generating utilities may be at a load resource imbalance

Mr. Kempton next went on to discuss problems that can result from the siting of wind farms in Idaho. These problems were brought to light by the proposed siting of a wind farm near Albion. Some of the residents in that area are not particularly happy about this wind farm while the county is actively advocating for the it.

Most of the residents issues revolve around aesthetic considerations. He distributed a map, that is on file at the Legislative Services Office, that shows where the wind farm will be located and what cities and counties it will affect. There is a balance of what county commissioners would look at in terms of the benefits, the impacts and the relevance of a wind farm to all the citizens of the county. When those considerations are put on the table, one of the main concerns is what kind of revenue distribution exists from the siting of the wind farm. This proposed wind farm tracks right along tax code areas 66, 17, 65, 16 and 67. Since it moves in and out of the various tax code areas and the associated taxing districts, there is a distribution of revenue, about \$2.5 million, that falls into each of those districts that is uneven.

Mr. Kempton stated that as more wind farms are sited in these areas, whether on federal land, state land or private land, they are going to cross different taxing districts that result in different distribution of revenue. Currently, there is no way for county commissioners to look at the taxing districts and decide whether the revenue distribution meets the needs of the individual local taxing districts as well as the needs of the county in general.

According to **Mr. Kempton**, there is a precedent for this type of examination in the local highway districts. **Mr. Kempton** noted that with local jurisdictions for highways, there has always been a provision that says that county commissioners have the duty and obligation for the best interest of the countywide administration of the secondary highway systems, to adjust boundaries of the highway districts coexisting in the county as shall most equitably and economically permit the administration, operation and construction of the secondary highway system within the county.

If the county commissioners could be allowed to adjust the boundaries of the tax

code areas, the taxing districts would be moved to allow for a more equitable distribution of revenue and does not add any additional tax on the owners of the wind farm. In **Mr. Kempton's** opinion, this would make the impact of wind farms sited near municipal areas less contentious if impacted communities are able to seek mitigating benefits in the form of tax revenue acquired through local tax district boundary changes.

Mr. Kempton explained that the proposed legislation establishes several new sections in Idaho Code that provide opportunities for County Commissioners to consider the distribution of tax revenues for certain local tax districts, the boundary of at least one being contiguous with one or more districts from for the same purposes, and that same boundary existing within five miles of a property, or properties, taxed on the basis of development and operation for the commercial purpose of generating and marketing electricity utilizing wind. Local tax district boundaries within any given county would be adjusted by the County Commissioners based on considerations of merit for equitable and economical operations between competing tax districts formed for the same purpose. He also noted that language should be developed to include cemetery districts and other local taxing districts in the legislation. In his opinion, this is the other part of finding revenue, where we are revenue strapped.

Mr. Kempton said that he just wanted to bring this issue to the committee's attention because the problem will continue as more wind farms are developed. He also stated that he is looking for support of the legislation from the committee. He added that the legislation is not complete and would like to this committee to pursue it further.

Representative Smylie asked if the legislation is to include all taxing districts. **Mr. Kempton** said that he would like it to be as complete as possible including fire protection districts and flood control districts but that it should atleast contain all of the primary taxing districts.

In response to another question from **Representative Smylie**, **Mr. Kempton** said that he does plan to meet with the Association of Counties to explain the legislation and to get their position on it.

Representative Eskridge asked if this legislation would conflict with the legislation that was passed on behalf of the municipalities regarding the taxation provisions that were set up dealing with distribution over the whole utility service area. **Mr. Kempton** said that, in his opinion, it does not. He added that he has discussed this with Mr. Ron Williams and there does not seem to be a problem.

Representative Eskridge clarified that all the legislation does is to offer a different

way of allocating revenue, not changing the tax itself. **Mr. Kempton** said that it changes the authorization for county commissioners to engage in that process. He added that he is just looking for a sense from the committee that this issue should be pursued.

Senator Werk said that in changing the boundary lines of a taxing district, other revenue would also be affected. He asked if that was correct or is it just specific to these projects. **Mr. Kempton** said that other revenues would also be affected but most of the land where these wind farms are being sited, especially on federal lands, is undeveloped and so there is not a lot of other revenue that exists. On state lands or private land it could become a problem but, in his opinion, this could happen today with the existing boundary. County commissioners should be able to handle such a problem, should it arise. There is more of a potential for problems without the legislation.

Representative Eskridge stated that, as he sees it, this legislation gives those impacted by wind farms the opportunity to benefit from them. **Mr. Kempton** said that was correct.

Senator Hill suggested that this concept be pursued and if the interim committee is extended into next year, they help move it along. **Representative Stevenson** said that, in his opinion, the concept is important and needs to be pursued further and offered his help and support. **Representative Bell** also offered to help with the development of the legislation.

Senator Stegner asked if consolidation of taxing districts had been considered. **Mr. Kempton** said that across county lines there is a joint exercise of powers act but he is not sure how consolidation would work. He noted that it is something the county commissioners in those areas could work on.

Representative Eskridge said that he would like to simplify this as much as possible. He noted that the problem that exists with any siting of resources is always who suffers the impacts and who gets the benefit. He stated that he would like to see this concept continue to be looked at because it tries to make a more equitable distribution of revenues to those affected. He also offered to help with the further development of the legislation. **Mr. Kempton** thanked **Representative Eskridge** and the committee for their support.

Representative Eskridge suggested that committee members visit www.nwcouncil.org and review the region power plan. In his opinion, there are some issues in the plan that merit attention. In a meeting this week of the Pacific Northwest Economic Region where the power plan was discussed to some extent, there was concern with some of the resources being proposed and the impact or

percentage that is anticipated that conservation might contribute to the regional resources. There is also increasing concern with transmission or the lack of transmission and how that is fitted in with those resources.

Marsha Smith, PUC Commissioner, was the next speaker. She distributed a handout from the Oregon Department of Energy that is a comparison of energy facility siting requirements between Oregon, Washington, Montana and California. This is available at www.energy.state.or.us/siting.

Ms. Smith stated that siting has been an issue for her since the Energy Policy Act of 1992 was passed. This act designated that, as federal policy, the provision of electric generation be done on a competitive basis. According to **Ms. Smith**, Idaho does not have a state plan for the siting of the many plants we hope commercial developers will bring to the state once competitive generation happens.

The states compared in the Oregon document are very similar to Idaho in terms of the same transmission grid, geography and so on. These states started their siting activities in the 1970s but they have been updated since then. Arizona also has a siting law.

Ms. Smith explained that according to the handout the following common characteristics exist for each of the four states:

- ▶ All four employ a comprehensive review of a proposed facility.
- ▶ The standards of other states and local agencies are combined in a consolidated review.
- ▶ In most cases, some type of preliminary notice is required before an application is filed.
- ▶ A “contested case” review of the application is required.
- ▶ Energy facilities are defined to include related facilities such as power lines.
- ▶ Need is addressed through planning in three of the four states.
- ▶ Public hearings are provided in addition to adjudicated proceedings.
- ▶ Ongoing regulation of an approved facility is based on certificate conditions.

Ms. Smith said that some of the states have taken the approach of having an entity that has some permanent members to which, on a project specific basis, relevant local and county officials are added. In Arizona, on the other hand, the Public Utilities Commission is the primary driver behind the siting process. She added the PUC commissioners are elected in Arizona. In Oregon and Montana, council members who consider siting issues are volunteer citizens that are appointed.

In **Ms. Smith’s** opinion, if the committee thinks the state of Idaho needs a centralized siting process for transmission or generation facilities, several items

need to be considered.

The first is the size and composition of the decision making body. In Washington, for example, there is a core of state agencies that are permanent members. When an application is submitted, this core group is augmented by particular cities, counties or port districts that are impacted by the application. According to **Ms. Smith**, this type of system includes people who look at the broad statewide, regionwide issues while at the same time involving the local control.

Next is what will the group look at. The states in the comparison range from Oregon where the siting council looks at everything that is 25 MW or larger to Washington where the siting council looks at everything that is 350 MW or larger. The decision needs to be made for both generation and what size of transmission lines need to be looked at.

Some of the states have a requirement that the body make a determination of need before they can authorize construction of facilities. In her opinion, after the Energy Policy Act of 1992, it would be better to follow the Washington statute. This declares up front that there is a need for energy facilities of all types in the state. This eliminates anyone else having to research loads and generation to make this determination, the legislature has already made that decision.

In Oregon, for the siting of smaller plants left to local entities, they have created a guidebook. In her opinion, such a guidebook would be invaluable to local officials who may not be familiar with such projects.

The next item for consideration is what kind of process should the entity be required to pursue. Nearly all of the states have some kind of preliminary filing requirement. The entity who is thinking of a project must file a preliminary statement first so people are made aware of such a possibility.

A decision has to be made regarding whether there will be a contested case format and what kind of hearings will be held. **Ms. Smith** stated that public hearings are a big part of the process in all of the states in the comparison.

Many of these states decided that it was necessary to have a planning process in place that plans for the future.

Another decision that needs to be made is what kind of power should be given to the authority to condition the certificate and what type of follow up should be required after the certificate has been granted.

Along with this, who makes the actual decision for granting the certificate. **Ms.**

Smith explained that in some states the authority decides but in Arizona the authority makes a recommendation and the commission grants the certificate. In Washington the authority makes a recommendation to the governor who then can accept, reject or ask for further study.

In order to be able to make a decision, guidelines of what to consider need to be established. What standards should be considered or examined in order to grant a certificate.

The final decision involves how to fund the process. Most of these states get their funding directly through the applicants.

In **Ms. Smith's** opinion, this is a very important issue for the state of Idaho and needs the attention of this committee and the legislature. The important thing is to have a vision of how this siting of facilities should occur before drafting any proposal or legislation.

Representative Eskridge asked how siting for a plant, such as the Semptra coal-fired plant in Glens Ferry, is handled currently. **Ms. Smith** said that would be handled by the county and the city where the plant is planning to locate. Such a plant does have to file with DEQ for air quality permits, with Water Resources if they are going to use water as well as meeting county zoning requirements. According to **Ms. Smith**, this all happens in a very uncoordinated fashion without a central place to go. The purpose of a siting authority is to provide a one stop shop for project developers to go to and make sure all of the bases have been covered in order to have a successful project. **Representative Eskridge** asked if currently the state has any ability to promote a project thought to be necessary. **Ms. Smith** said that the state has the ability to promote projects through tax incentives and the like but that siting of projects is up to local authorities. She added that it has been discovered that the PUC does have some authority for decision making when cities are not able to find places for transmission lines.

Representative Smylie commented that Wyoming, Nevada and Utah are not included in this comparison and asked if those states have a siting authority. He also voiced concern that such an authority would make the process more complex instead of simplifying it. **Ms. Smith**, in response to his first question, said that it was her understanding that these states do not have a centralized method for siting of facilities. Regarding a siting authority complicating the issue, **Ms. Smith** said that could go either way and would depend on how the authority is set up. In establishing such an authority, the state would decide, as discussed earlier, the size of the plant that would be required to get state approval. Also if such approval is necessary, the hearing process would include local input.

Mike Nugent, Legislative Services Office noted that power plant siting has been before the legislature in the past. He explained that in 1978 a bill was introduced that would have put the PUC in charge of such sitings. The bill eventually died due to too many amendments being attached to it. He added that this committee also studied the issue and **Senator Lee**, when he was chairman of the committee, put together two versions of siting legislation. One version was based on the Washington law and the other was similar to the 1978 version. Neither version was ever dealt with due to **Senator Lee's** resignation. In response to a question from **Representative Eskridge**, **Mr. Nugent** said that, as he remembers, the Washington version included transmission siting. **Ms. Smith** responded that, in her opinion, making the PUC in charge of siting would be a bad idea.

Representative Eskridge asked, given the fact that the state has transmission capacity problems, whether a state siting authority make it easier or more efficient in terms of addressing broad regional transmission needs. **Ms. Smith** said that in her opinion a statewide process would be very beneficial in addressing many of the regional efforts. There are several ongoing regional efforts to try to get more transmission to the area. She noted that the Western Governors Association in 2001 made the siting of transmission one of their top priorities. All of the state governors have signed a siting protocol that calls for the states and the federal land management agencies to coordinate their processes so that permitting from all of the different agencies happens simultaneously.

Senator Stegner paraphrased that, according to **Ms. Smith**, the state of Idaho lacks a formulated policy for the siting of power generation and transmission and this forces the PUC into awkward positions. He continued that, in her opinion, it would behoove the state to have a legislative policy regarding such sitings and she is asking the legislature to consider that. **Ms. Smith** said that she is not sure lack of a policy puts the PUC in awkward positions but otherwise his statement is correct. In her opinion, there is resource potential available for utilities without the ability to get the energy where it needs to go.

Representative Eskridge asked if the absence of a state authority diminishes Idaho's ability to be an effective player in the transmission planning and utilization regionally. **Ms. Smith** said that, in her opinion, lack of a state authority imperils the state's ability to ensure that power is available at all times where it is needed. It is her view that a state siting process would help ensure adequate energy supply to the citizens of Idaho in a responsible manner.

In response to another question from **Representative Eskridge**, **Ms. Smith** explained that the PUC can, through a painful process, stop one county from being able to prevent another county from receiving needed power. She added that cities need to plan transmission corridors when planning for growth so that everyone knows

where transmission lines will be located in advance.

Representative Stevenson said that he favors the Oregon law partly due to the fact that it encompasses the county land use planning rules and regulations. He also likes the fact that challenges go directly to the Supreme Court. He noted that Oregon has only used this law for generation siting, not transmission. He asked if one of the reasons transmission is not being proposed is due to the fact that the system keeps changing from RTOs to Gridwest and the like. In his opinion, this needs to be solved before transmission will be proposed because those proposing it are afraid of losing money. **Ms. Smith** agreed that this was correct. She added that when the Energy Policy Act of 1992 decoupled the provision of generation from transmission by declaring that generation could be competitive, it was no longer clear who was responsible for transmission. Utilities were afraid to put money into transmission because of talk of regional transmission organizations (RTOs) that would force utilities to give up control of such transmission facilities. Also, if RTOs are going to be developed, why invest in transmission now.

Representative Stevenson asked if a siting authority could include both transmission and generation or do they need to be separated. **Ms. Smith** said that, in her opinion, they can be included together. Regardless of who pays for the facility or operating it, the issue of where it will be located for both generation and transmission should be handled together.

Representative Bell asked what the fiscal impact of the past legislation that **Mr. Nugent** discussed was. **Mr. Nugent** said it was fee driven in both versions. As he recalled it was based on the nameplate generation capacity of the project or on the value of the transmission.

Representative Eskridge asked whether that legislation included any reference to what type of responsibility the state would incur in terms of personnel to implement such an act. **Mr. Nugent** explained that the Washington version relied on existing staff within certain agencies. He noted that there would be a budget impact regardless of where this is located.

Mr. Nugent said that in existing state law, the large swine farms statute includes a process for siting of such facilities as well as does a hazardous waste disposal facility siting act. These are similar in mechanism to the Washington version of the past legislation.

Representative Eskridge said that, from the chairman's perspective, the siting issue is quite significant. As the committee gets more involved energy issues and transmission sitings, it seems that while development of resource generation is important, getting the energy where it needs to be is equally as important. He asked for suggestions on how to proceed.

Mr. Hawk, JR Simplot Company, said that he was involved with development of a gas fired, combined cycle combustion turbine project in Oregon and wanted to explain some of the pitfalls that were encountered with the siting authority. **Mr. Hawk** said there are pluses and minuses to this proposal. The pitfalls of the one stop shop, in his opinion, is that it make it easier for every intervenor, both legitimate and otherwise, to hold up the proceedings at any time. It costs a lot up front to enter the process and he is not sure those costs should be borne solely by the developer. The developer will be entertaining their own costs but to fund the siting council or the research that the county or state would have done anyway seems unnecessary. He noted a recovery mechanism could be built into the system but to have to spend the money up front makes it very difficult. **Mr. Hawk** stated that any issue of an allegation that the council acted in an arbitrary and capricious manner is appealable. Whether or not the council acted in this manner is also appealable. Some councils can order or accept CO2 mitigation outside the realm of state law, for example; buying old cars for retirement due to emissions issues. Sometimes council appointments are questionable due to favoritism. He added that care needs to taken so that members from state agencies do not have preconceived ideas about particular projects.

Mr. Hawk noted that there is a plus by having a centralized authority with regard to timing and time table flexibility. Have such a centralized authority does speed the process up but that can easily be degraded. He stated that, in his opinion, this is a very complex issue and just wanted to bring up some of the unintended consequences that could result from developing a centralized siting authority. The one stop shop concept, according to **Mr. Hawk** is legitimate and there are others who could testify to that fact. He suggested that care be taken when drafting the legislation so as not to make certain mistakes. In his opinion, it is a very important concept that needs to be looked at but just cautioned that the legislature try to solve as many issues as possible going in and not have to revisit those issues down the road.

In response to a question from **Representative Eskridge**, **Mr. Hawk** said that this can be both good and bad. It can be good if the committee proceeds with caution and covers every base possible. There are many ways that roadblocks can develop that can stop things that current utilities need to do. These roadblocks can also put a developer off and eventually drive them out of the state.

Mr. Bill Eddie, Idaho Conservation League, testified his support for investigation into the siting issue. He said that siting drives other unrelated issues. In his opinion, currently in Idaho there is a failure of process. Projects such as the coal fired plant in Glens Ferry will have impacts that stretch beyond the locality yet, the primary siting is made by the local governments. In the perspective of the Idaho Conservation League, that is a serious problem with no obvious solution. The

reason there is no obvious solution is due to the fact that the process for obtaining a permit is scattered across local agencies, none of which can address the whole spectrum. In his opinion, it is important for this committee to investigate that problem.

Representative Smylie asked if this means the Idaho Conservation League favors removing the approval power from the county commissioners and placing it in the hands of the state agencies or do they support keeping decision making authority in the hands of the county commissioners and adding another layer of bureaucracy.

Mr. Eddie said they are not in favor of removing the county authority. As to adding another layer of bureaucracy, **Mr. Eddie** stated that in some cases this layer will just be information and will depend on how the legislation is structured.

Representative Stevenson suggested keeping this item on the agenda for future meetings. **Senator Stegner** commented that the committee has spent several years trying to provide incentives for alternative energy projects and encouraged the committee to consider the siting concept as an area for further explanation.

Representative Eskridge agreed.

Senator Burtenshaw was introduced to discuss a tour he took to the Minnesota Wind Farm this fall. He explained that the facility is called Cornerstone Coop. He said he did not realize how big a 1.5 wind turbine is. Part of the tour included an assembly plant and it was very interesting. The foundation under a wind turbine is 20 feet deep and the base is 215 feet high. The rotor, motor, generator and fan blade are set on top of that and they are 115 feet high. It was his understanding that the area for maintenance of the rotor area weighs 56 tons. The typical speed at the tip of the blades is 175 mph.

Senator Burtenshaw said that turbines of this size cost \$1.5 million each with an estimated life span of 50 years. In order to afford the cost in Minnesota they have formed coops. He distributed a handout that showed how the financing of a wind turbine by a coop would be handled. This is available at the Legislative Services Office. It shows that the cooperative equity is 30% (\$450,000), the farmer equity is 10% (\$150,000) and debt is 60% (\$900,000). This chart shows that net income for the first year would be \$22,308. After the 15th year the net income goes up to \$120,000 and continues there for the life of the project.

Senator Burtenshaw noted that for these projects to work, transmission lines are necessary. This works in Minnesota due to the fact that they have power pools where the wind power can be dumped. In those pools there is enough gas and coal fired energy generated so there is no need for the wind power to be firmed up. This is similar to net metering in this area.

Senator Burtenshaw added that some farms in Minnesota has also purchased used, refurbished turbines to generate power for their farms. These provide more than enough power to run the individual farms and with the net metering credit, these pay for themselves in six years.

Senator Burtenshaw explained that in Minnesota, wind power creates 22 direct and indirect construction and manufacturing jobs for each million watts (MW) of installed capacity. Wind projects create one operation and maintenance job for every MW of installed capacity. Each 100 MW of new wind development in southwest Minnesota can be expected to generate about \$150,000 per year in direct lease payments to land owners. Based on tax changes enacted in 2002, a 100 MW wind plant can be expected to generate about \$370,000 annually in county and local tax revenue for the entire life of the project. Each 100 MW of installed capacity results in an additional \$500,000 in annual purchases for goods and services. Wind energy has proven to have real economic benefits for Minnesota in the form of jobs, new tax revenue and new income for farmers.

Senator Burtenshaw said that part of the meeting was spent discussing what had been done with the money that is in reserve in the coops. Financing the wind turbines was one thing that had been done. According to **Senator Burtenshaw** these coops finance anything related to energy or agriculture and they have been very successful.

Senator Burtenshaw stated that, according to conservationists, if the United States would harvest 10% of the wind energy available, it would generate as much electricity as the coal fired generator plants without the dangerous air emissions.

Representative Eskridge asked if Minnesota has state tax incentives available for renewable energy projects. **Senator Burtenshaw** said that in the beginning the state had several tax incentives but as more federal incentives were made available, that is the direction they headed. He commented that the school budgets in that area are not suffering due to the taxes that are received from the wind generators and ethanol plants. He also noted that people in the agricultural industry have been put back to work as a result of these projects.

Senator Hill asked for information on the federal tax credit and why that escalates 2% per year. **Senator Burtenshaw** answered that this was utilized because they know that, in order to get the program going, they needed to attract large projects that would actually pay some taxes. In his opinion, the coops they have developed are the key to the success of the program. He added that the federal tax credit would be the same in Idaho but we would have problems due to transmission issues.

The committee moved on to discuss the fact that it expires on November 30, 2004. **Mr. Nugent** said that legislation is required to reauthorize the committee and that this has been done in the past. He suggested making minor changes to the Concurrent Resolution that created the committee and change the dates.

Representative Smylie moved that Legislative Services be authorized to draft legislation continuing this committee with the same broad charge of energy and energy policy that was included in the most recent resolution. Senator Stegner seconded the motion and the motion carried unanimously by voice vote.

The next item on the agenda was a discussion of tax incentives for alternative energy projects and proposed legislation. The first item for discussion was the sales tax exemption for renewable energy projects. **Mr. Nugent** explained that the draft legislation MPN296 offers a sales tax exemption for equipment used in an alternative method of generation of electricity. This exempts from taxes all sales of equipment and supplies, except hand tools as defined in section 63-3622D, Idaho Code, to be used for an alternative method of generation of at least 200 watts of electricity. **Mr. Nugent** noted that this same legislation was presented to the Revenue and Taxation committee last year. This defines an alternative method for the generation of electrical energy as biomass, waste, renewable resources including solar, wind, geothermal resources, co-generation or any combination thereof. Waste shall include landfill gas and that is also defined. This includes an emergency clause as well as a sunset date of July 1, 2011.

The second sales tax exemption piece of legislation, MPN295, as explained by **Mr. Nugent**, is taken from the Utah legislation that was passed in 2004 as requested by **Representative Smylie**. This also has a sunset date of June 30, 2010. He cautioned that the language in this legislation does allow coal to potentially qualify as a renewable energy source. **Representative Smylie** asked if it would be possible to put a more specific definition of waste energy in the legislation that would exclude coal. In **Mr. Nugent's** opinion this could be done but that this legislation is very complicated and hard to understand.

Representative Eskridge agreed that MPN295 is very complicated and that he was more comfortable with MPN296. He stated concern regarding the definition of renewal resources not including small hydro as it was defined in other alternative energy legislation that was presented last year. **Senator Hill** agreed that he was more comfortable with MPN296 and suggested the language read "electrical energy on a facility located within the state."

Senator Hill commented that his position is not to offer all three incentives, the sales tax exemption, the investment tax credit and the production credit. Last year one bill was passed for the production credit and one for the investment tax credit

and now a sales tax exemption is also being considered. Offering all three types of incentives, in his opinion, is too much to give at this point in time with our budget situation. He is also not in favor of passing all three incentives and giving the developer a choice, it becomes too complicated.

Representative Smylie agreed with Senator Hill and commented that, in his opinion, the investment tax credit does not offer a dollar for dollar return for the producer and stated his preference for the sales tax exemption. He also agreed that the definition of small hydro needs to be added. In his opinion, the definition of 200 watts is too small and needs to be higher.

Representative Smylie continued that, even with the question of coal as a renewable in MPN295, he is more comfortable with that version. This is due to the fact that it goes into more detail of what is and what is not acceptable.

Representative Eskridge asked whether the committee wanted to pursue only the sales tax incentive option or to also consider the investment and production tax credit incentives. **A show of hands from committee members indicated interest in just pursuing the sales tax exemption option.**

Senator Stegner cautioned that if a sales tax bill is the only legislation presented by this committee to the Germaine committee and it fails for some reason, that leaves no other option. **Representative Cuddy** agreed with that. He did not see a problem presenting more than one bill for consideration. **Representative Smylie** stated that in studying all of the proposed legislation, he has become more in favor of the sales tax exemption.

Representative Eskridge stated that the committee will go through each of the proposed drafts and entertain motions as to whether those should be sent out with a recommendation. **Senator Hill** made sure that all committee members were familiar with the investment tax credit and the production tax credit legislation. Other members said that they were due to the fact that it was the same legislation that was passed by the legislature last year.

Senator Hill suggested that, before more discussion was held regarding the details of the legislation, the committee needed to narrow down the direction they want to take.

Representative Stevenson voiced his support for a sales tax exemption and said that the sunset date needs to be out as far as 2011 because it will take that long for projects to get under way. In his opinion, the investment tax credit and the production tax credit do not do what the committee wants. That is to jump start an industry that is having trouble getting started. According to **Representative**

Stevenson, without transferability, the tax credits do not really help anyone. This was part of the problem with the legislation as it was presented last year.

In order to move things along, **Representative Smylie made a motion that the committee pursue sales tax exemption legislation. Senator Hill seconded.**

Senator Stegner said that the reason there is no existing sales tax exemption on production equipment for utilities is because sales tax is not charged on the end product. By adding a sales tax exemption to alternative energy, in his opinion, the committee is deviating from a substantial tax policy of the state. He is in agreement that the alternative energy industry needs help getting started in the state but does not think offering a sales tax exemption is the best way to do it.

He continued that it is his view that, as a matter of broad tax policy, the state ought to be broadening the tax base and considering lowering the rate, rather than continually adding exemptions. In his opinion, this legislation is contrary to the direction the state should be taking and contrary to the efforts he would like to see made in terms of developing long term improvements to a tax system that is riddled with exemptions. He stated that he will be voting no on the motion and encouraged others to reject the idea as well.

Senator Hill agreed with Senator Stegner but stated that, on the other hand, the state is stuck with the existing sales tax exemptions. He added that the reality is that Idaho is at a disadvantage in the region due to the fact that surrounding states either do not have a sales tax or they have granted a sales tax exemption to alternative energy investment. In his opinion, the state cannot compete without such an exemption. **Senator Werk** agreed that at some point the existing sales tax exemptions need to be looked at but that the state needs to be able to compete with surrounding states for renewable energy projects. In his opinion, creating this exemption with a sunset offers a good incentive to help get this industry off the ground in this state.

Representative Bell said that she agreed with everything that has been said. She noted that when you get right down to it, once this is sent to the Germaine committee, that in this case would be the Revenue and Taxation committee, the members of that committee deal with tax issues all session long, year after year and that they are experts on those issues and that is where the decisions will be made. This gives her comfort because they are experts and will do their best to make the right decisions.

Representative Eskridge commented that while Idaho feels at a disadvantage to other states due to sales tax exemptions in surrounding states, he has learned that Montana says that they cannot compete with Idaho for such projects because our

property tax is so much lower.

The motion to pursue the sales tax exemption legislation was voted on and it carried with Senator Stegner voting no.

Discussion of the language of the actual sales tax exemption legislation continued with **Representative Smylie** reiterating language that had been suggested earlier. This included that it say the facility be located in the state and that it include the definition of small hydro. He suggested a sunset date of 2010. He stated that even though the Utah law is more complicated, that would be the one he favors.

MPN296 defines generating capacity at 200 watts, the committee suggested that this needed to be higher. **Representative Cuddy made a motion that the language be changed to a 25 kw limit. Representative Stevenson seconded and the motion carried by voice vote.**

Representative Eskridge stated that 25 kw would be a guideline for **Mr. Nugent** in preparing the legislation as would that the facility be located within the state. The language would also be adjusted to exclude coal from waste energy so that it cannot be considered as a renewable resource. **Representative Eskridge** suggested going back to the original definition of renewable resources that was included in last year's legislation that includes a definition of low impact hydro being a hydro facility within an existing canal. The committee agreed to use the definition that is on page 4 of MPN300.

The committee moved on to discuss the investment tax and production credit. **Senator Stegner moved that the committee submit these two pieces of legislation to the Germaine committee for consideration. Senator Hill seconded.**

Representative Smylie suggested that these two pieces of legislation only be used as a fall back option should the sales tax exemption fail. **Senator Werk** agreed. **Senator Stegner** said that the committee could attempt to do this but that the Revenue and Taxation Committee can deal with legislation in any order they want to.

Representative Smylie said that if this legislation is presented at the same time as the sale tax legislation, he would not support the motion. **Representative Stevenson** said that since the legislation does not include transferability, he would not be able to support the motion either.

Representative Eskridge stated that he was uncomfortable presenting only one option and would like to have all three bills considered in order to get something passed to encourage development of alternative energy projects.

The motion to submit the investment and production tax credit to the Germaine committee failed with four nays.

Representative Stevenson moved that these two pieces of legislation be moved forward with transferability included. Representative Bell seconded. This motion also failed with four nays.

On a motion from Representative Smylie and a second from Representative Stevenson, the committee voted to approve renewal of the Clearing Up newsletter that deals with energy related issues for another year.

The meeting was adjourned at 3:15 p.m.